the australian PIPELINE industry association Ltd

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Committee Secretary
Joint Select Committee on Australia's Clean Energy Future Legislation
PO Box 6021
Parliament House
CANBERRA ACT 2600
via email: jscacefl@aph.gov.au

SUBMISSION FROM THE AUSTRALIAN PIPELINE INDUSTRY ASSOCIATION

Dear Secretary

The Australian Pipeline Industry Association (APIA) would like to take this opportunity to inform Committee members of the impacts on the Clean Energy Bill 2011 on Australia's gas transmission industry and other industries that operate under long-term bi-lateral contracts.

The gas transmission industry is in the business of transporting natural gas to markets and users. Once a pipeline is constructed, it cannot be moved. To invest in new pipelines and expansions of existing pipelines, pipeline owners must be confident the demand for a pipeline's services will endure. This is primarily managed through the negotiation and entering into of bi-lateral, long term contracts.

As outlined below, many gas transmission contracts do not have provisions for a carbon price. There is a material risk that costs associated with a carbon price will not be able to be passed through the supply chain to the appropriate parties, users of natural gas.

APIA supports the introduction of an efficient carbon price. However, the issue of contractual impediments to cost pass through must be addressed. This is an issue that was relevant in 2009 during consideration of the Carbon Pollution Reduction Scheme, and has continued to be a major concern for the gas transmission industry.

Contractual impediments to cost pass through

As noted by the Department in its Discussion Paper on Point of Liability and Carbon Cost Pass Through, dated 18 April 2011:

> ***Carbon cost pass through***
> *A carbon price mechanism will impose a cost on carbon pollution that will change the relative prices for goods and services throughout the economy. In general, the additional cost to those producers required to pay a carbon price will be passed through the supply chain and will be reflected in the final price for a product.*
>
> *However, in some cases, economic, regulatory or contractual barriers might prevent carbon cost pass through initially. Where this occurs, price signals that guide production, investment and consumption decisions to reduce emissions will be blocked or muted and the impact of a carbon price mechanism on particular firms or industries may be increased.*

It is the policy intent that costs associated with a carbon price are passed through the supply chain. The gas transmission industry is one industry where there is significant contractual impediments to the pass through of these costs.

The commercial frameworks of the gas transmission industry are such that the majority of transactions are conducted under long-term bi-lateral contracts. The long-term nature of these contracts means that many were entered into before there was wide-spread acceptance of the need for a carbon price. These contracts do not have adequate provision to treat a market based carbon price appropriately, with costs passed on to customers of pipelines (shippers) and ultimately to gas users. In some cases, these contracts will run well into the 2020s.

It is important to note that contractual impediments to carbon cost pass through impact the gas transmission industry unevenly. The majority of gas transmission pipelines in Australia are unregulated, which means they face competition from other pipelines or energy sources. Therefore, new government policy can shift the competitive balance between these companies because of the timing of a company's contracts and, thus, whether the contracts account for carbon costs.

Treatment of a carbon price mechanism as a tax

It is standard practice to have clauses dealing with new taxes in contracts, and having the charges for carbon emissions structures as a tax in the Clean Energy Bill 2011 would simply and substantially resolve the matter of cost pass through for the gas transmission industry.

The Prime Minister has acknowledged that her proposal to introduce a fixed price for carbon emissions is effectively a tax. From *Hansard* on 24 February, the Prime Minister:

> *The carbon pricing mechanism that I have announced today, arising from the discussions of the Multi-Party Climate Change Committee, is a carbon price mechanism that would start on 1 July 2012. It is a scheme that would start with a fixed price for a fixed period, effectively like a tax.*

However, the Clean Energy Bill does not introduce a tax, it introduces an emissions trading scheme with a fixed price for three years.

What this means is that the gas transmission industry, and other affected industries, will have to enter contractual negotiations with customers to attempt to appropriately allocate carbon costs. It is likely these contract negotiations will be protracted and antagonistic, as neither party will be willing take up costs it does not have to. Regardless of the result, these contract negotiations represent another cost to the Australian economy that could have been avoided through better drafting of the Clean Energy Bill 2011.

The Government has long maintained that it will monitor the progress of commercial negotiations prior to considering action on the issue of contractual impediments to cost pass through. APIA will keep the Government informed of progress and looks forward to working further with the Government on this important issue.

Yours sincerely

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